

# **EXHIBIT 3**

Page 1

1                   UNITED STATES DISTRICT COURT  
2                   NORTHERN DISTRICT OF NEW YORK  
3

4     RACHEL COLANGELO and KATHLEEN       )     Case No.  
5     PARADOWSKI, individually and on      )     6:18-cv-01228  
6     behalf of a class of similarly        )     [LEK/DEP]  
7     situated individuals,                   )  
8    )  
9     Plaintiffs,                                )  
10    )  
11   vs.    )  
12    )  
13   CHAMPION PETFOODS USA INC. and      )  
14   CHAMPION PETFOODS LP,                    )  
15    )  
16   Defendants.                                )  
17    )  
18    )  
19    )  
20   Reported by:  
21   ROCHELLE HOLMES  
22   CSR No. 9482  
23   Job No. 4487163  
24   PAGES 1 - 42  
25

14   VIDEO-RECORDED VIDEOCONFERENCE  
15   DEPOSITION OF BRUCE SILVERMAN  
16   Wednesday, March 17, 2021  
17   Volume I

21   Reported by:  
22   ROCHELLE HOLMES  
23   CSR No. 9482  
24   Job No. 4487163  
25   PAGES 1 - 42

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	)		
10	Defendants. )		
	)		
11	_____)		
12			
13			
14	Deposition of BRUCE SILVERMAN, testifying from Los		
15	Angeles, California, taken on behalf of Defendants, via		
16	videoconference, beginning at 9:03 a.m. and ending at		
17	10:11 a.m. on Wednesday, March 17, 2021, before ROCHELLE		
18	HOLMES, Certified Shorthand Reporter No. 9482, Certified		
19	Realtime Reporter No. 0123.		
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	Page 3		Page 5
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2 (Pages 2 - 5)

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<p>1 Counsel and all present will now state their 2 appearances and affiliations for the record. If there 3 are any objections to proceeding, please state them at 4 the time of your appearance, beginning with the noticing 5 attorney.</p> <p>6 MR. COULSON: David Coulson for the 7 defendants. And I do have a few qualifiers after your 8 preface. So this deposition's actually taking place in 9 three cases and we need to qualify further that on 10 November 24th, 2020, Mr. Silverman was deposed in a case 11 called Song versus Champion. And that transcript will 12 apply in these three cases as if it was taken in these 13 three cases.</p> <p>14 In addition, besides the Colangelo case, 15 Mr. Silverman will be deposed by me in the Zarinebaf 16 case, Z-A-R-I-N-E-B-A-F, versus Champion, that's in the 17 Northern District of Illinois and the Shaker, 18 S-H-A-K-E-R, versus Champion case in the Eastern 19 District of Michigan.</p> <p>20 So those are my qualifiers.</p> <p>21 THE VIDEOGRAPHER: Thank you.</p> <p>22 MR. LOCKO: This is Trevor Locko on behalf of 23 the plaintiffs from Robbins LLP in San Diego, 24 California. And I have no problems with the qualifiers 25 Dave just said. So ready to proceed.</p>	<p>Page 6</p> <p>1 representing the plaintiffs in any of these cases 2 against Champion?</p> <p>3 A Yes.</p> <p>4 Q Who was that?</p> <p>5 A I spoke to Mr. Wexler about a completely 6 different matter.</p> <p>7 Q Okay. But as to Champion, besides Mr. Locko, 8 have you had any other conversations about the Champion 9 cases with any other lawyers for the plaintiffs other 10 than Mr. Locko?</p> <p>11 A No.</p> <p>12 Q Approximately how many hours of time of work 13 have you put into the Champion litigation since the 14 November 24th deposition?</p> <p>15 A Oh, boy. Gosh. I would guess -- 16 unfortunately I didn't prepare for that question. So I 17 can only estimate, but I believe it's probably about 18 50 hours of additional work.</p> <p>19 (Reporter clarification.)</p> <p>20 Q BY MR. COULSON: And in total, what are the 21 fees that you have billed to the plaintiffs' counsel for 22 your work in the Champion litigation?</p> <p>23 A What I've billed or what I've actually 24 received?</p> <p>25 Q What you've billed, I assume. Hopefully for</p>
<p>1 THE VIDEOGRAPHER: Thank you very much. 2 Will the court reporter please administer the 3 oath.</p> <p>4 BRUCE SILVERMAN, 5 having been duly administered an oath in accordance with 6 CCP 2094, was examined and testified as follows:</p> <p>7</p> <p>8 EXAMINATION</p> <p>9 BY MR. COULSON:</p> <p>10 Q So good morning, Mr. Silverman.</p> <p>11 A Good afternoon, Mr. Coulson.</p> <p>12 Q Thank you.</p> <p>13 Okay. So we were last together on 14 November 24th, so since that time, what work have you 15 done from November 24th to today in connection with any 16 of the litigation against Champion Petfoods?</p> <p>17 A I prepared three expert reports, one for the 18 Michigan case, one for the Illinois case and one for the 19 New York case.</p> <p>20 Q Besides preparing those expert reports, did 21 you do any other work in connection with Champion?</p> <p>22 A No other than phone conversations with 23 Mr. Locko.</p> <p>24 Q So Since November 24th, besides Mr. Locko, 25 have you spoken with any of the other lawyers</p>	<p>Page 7</p> <p>1 you you'll get paid, but --</p> <p>2 A Yeah, I've been pretty good about that. I 3 believe it's in excess of \$80,000.</p> <p>4 Q Now, since November 24th, have you had your 5 deposition taken in any other cases?</p> <p>6 A No.</p> <p>7 Q And have you testified in trial or any other 8 type of proceeding as an expert witness since 9 November 24th?</p> <p>10 A No.</p> <p>11 Q Have you -- since November 24th, have you been 12 engaged by any of the plaintiffs' counsel here for any 13 other litigation?</p> <p>14 A No.</p> <p>15 Q I think you listed a case called Thomas Bailey 16 versus Rite-Aid Corporation, United States District 17 Court, Northern District of California where you 18 indicate you were deposed December 10th, 2020.</p> <p>19 Does that refresh your recollection?</p> <p>20 A Yes. I forgot about -- I forgot about that 21 deposition.</p> <p>22 Q What is that case about?</p> <p>23 A It's a case about labeling.</p> <p>24 Q Is it also a consumer class action complaint?</p> <p>25 A It's a consumer class action case involving a</p>

<p style="text-align: right;">Page 10</p> <p>1 product that Rite-Aid sells under its own label.      2 Q What's the product?      3 A The product is acetaminophen.      4 Q Just in a nutshell, what's the claim made by      5 the plaintiffs?      6 A Rite-Aid sells, as is typical with mass      7 merchandisers like drugstores, they have -- they sell      8 products under private label that in essence are      9 emulating national brands. In this case, the product is      10 emulating Tylenol. And the -- there were two versions      11 of the product. Well, actually it's more than two, but      12 in essence there are two. One is a version that is      13 marketed as a rapid release product and the second is a      14 product, acetaminophen product that is not marketed as      15 rapid release.</p> <p>16 The rapid release product costs more. And      17 according to the plaintiffs, their allegation, is that      18 the rapid release product actually does not work any      19 faster than the significantly lower-priced acetaminophen      20 product that is not rapid release. And, in fact, the      21 less expensive product may actually work a little bit      22 faster.</p> <p>23 Q And what's the nature of your opinions in the      24 Bailey case?</p> <p>25 A My opinions in that case deal with the</p>	<p style="text-align: right;">Page 12</p> <p>1 Q BY MR. COULSON: Right. My first question was      2 did you conduct a survey as part of your expert work in      3 the Bailey versus Rite-Aid case?      4 A And my answer to that was no.      5 Q Did you do any -- did you interview any      6 consumers or do any particular research as to the      7 consumers of those products in the Rite-Aid case?      8 A I did not interview consumers, but I did quite      9 a bit of research about behavior of consumers as regards      10 analgesic products. I happen to have a lot of      11 experience with mass merchandisers and how their      12 customers tend to behave at retail.</p> <p>13 Q In the Champion litigation, since      14 November 24th, have you reviewed the deposition      15 transcripts of any of the plaintiff consumers who have      16 sued Champion?</p> <p>17 A I have not.</p> <p>18 Q Have you interviewed any of the plaintiffs who      19 have sued Champion in any of the cases?</p> <p>20 A I have not.</p> <p>21 Q Have you interviewed or otherwise talked with      22 consumers of Acana or Orijen products?</p> <p>23 A The question is have I spoken to them, not to      24 my knowledge.</p> <p>25 Q I take it that you've performed no consumer</p>
<p style="text-align: right;">Page 11</p> <p>1 materiality of claims of rapid relief. That if a      2 product -- if an analgesic product promises fast relief      3 or faster relief, consumers would consider that very      4 important and be motivated to purchase it.</p> <p>5 Q Do you know when that case is set for trial?</p> <p>6 A I do not. I've never discussed that with the      7 attorneys.</p> <p>8 Q Okay. Who are the attorneys who retained you      9 in the Bailey case?</p> <p>10 A I was retained by a firm in Knoxville,      11 Tennessee.</p> <p>12 Q Greg Coleman?</p> <p>13 A Yeah, that's it. Greg Coleman. You know, I      14 hate to admit this, Trevor probably will be somewhat      15 insulted, I think about my clients in terms of the names      16 of the lawyers I work with more than the names of the      17 firms they work for.</p> <p>18 Q In the Bailey case, did you conduct any type      19 of consumer survey?</p> <p>20 A No, I did not.</p> <p>21 Q Okay. Did you conduct any kind of research      22 into consumers of those products at issue?</p> <p>23 (Reporter clarification.)</p> <p>24 THE WITNESS: Are you asking if I conducted a      25 survey?</p>	<p style="text-align: right;">Page 13</p> <p>1 survey as to Champion's products; is that correct?</p> <p>2 A Yes.</p> <p>3 Q And I take it that you've conducted no focus      4 groups as to Champion's products; is that correct?</p> <p>5 A Yes.</p> <p>6 Q I asked you last time if you had reviewed the      7 expert report of Mr. Boedeker, that's spelled      8 B-O-E-D-E-K-E-R, he's another expert retained by the      9 plaintiffs, and your answer was no.</p> <p>10 So since November 24th, have you reviewed any      11 expert reports produced by Mr. Boedeker?</p> <p>12 A I don't recall.</p> <p>13 Q Have you -- have you seen any surveys or      14 survey results by Mr. Boedeker?</p> <p>15 A Hold on one second. Let me turn this off. I      16 took the battery out to make sure it doesn't work.</p> <p>17 Q Okay. No problem. I'll ask the question      18 again.</p> <p>19 Since November 24th, have you reviewed any      20 surveys performed by Mr. Boedeker?</p> <p>21 A No, I haven't. I don't believe so. If I did,      22 I don't recall.</p> <p>23 Q Have you spoken with Mr. Boedeker?</p> <p>24 A I have not spoken to Mr. Boedeker.</p> <p>25 Q Champion has engaged an expert witness named</p>

<p style="text-align: right;">Page 14</p> <p>1 Professor Hanssens, who coincidentally lives and teaches 2 in Los Angeles, have you reviewed Mr. Hanssens' report 3 from the Song case?</p> <p>4 A I don't recall.</p> <p>5 Q Do you have any recollection of any of 6 Dr. Hanssens' criticisms of your opinions?</p> <p>7 A I don't recall. I can't recall what his 8 opinions were.</p> <p>9 Q You have a CV that's attached to the three 10 expert reports that we're going to talk about today.</p> <p>11 Is there anything new to add to that CV that's 12 material?</p> <p>13 A Not to the CV. The -- I guess the exhibit 14 that lists my experience -- testifying experience would 15 include the Rite-Aid case.</p> <p>16 Q Okay. And since the Rite-Aid deposition on 17 December 10th, have you been deposed at all in any other 18 litigation?</p> <p>19 A No.</p> <p>20 Q To your knowledge, have you produced any other 21 expert reports in any other consumer litigation since 22 November 24th?</p> <p>23 A Yes, I have.</p> <p>24 Q And I just want to ask you about ones that are 25 public. What cases are those?</p>	<p style="text-align: right;">Page 16</p> <p>1 THE WITNESS: Now I'm seeing it.</p> <p>2 Q BY MR. COULSON: Okay. All right. It's 3 supposed to be marked as Exhibit 4.</p> <p>4 Do you recognize this report?</p> <p>5 A Yes, I do.</p> <p>6 (Exhibit 4 was marked for identification 7 and is attached hereto.)</p> <p>8 Q BY MR. COULSON: This is a general question, 9 what changes did you make between what you did in the 10 Song case and what you did here in this Colangelo and 11 Paradowski case?</p> <p>12 A That's a -- that's a complex question. I'll 13 give you the best answer I can. In these cases, and 14 actually, I believe it's in all three cases, the 15 specific -- the diets that were discussed in each case 16 was somewhat different, they were fewer -- I think, for 17 example, in the New York case here, the Colangelo case, 18 I think there were -- my recollection is there were only 19 two diets that were at issue and they were more in the 20 -- the other two cases.</p> <p>21 If I recall correctly in this case, they were 22 only -- the diets that were at issue, both Acana, there 23 weren't any Orijen products. In the New York case, 24 there was -- I did not discuss the issue of 25 pentobarbital. I was instructed to do that by the</p>
<p style="text-align: right;">Page 15</p> <p>1 A I don't think any of them are public at this 2 time.</p> <p>3 Q Since I last deposed you on November 24th, are 4 you aware of any orders of any court that have excluded 5 in whole or in part any of your opinions?</p> <p>6 A No.</p> <p>7 Q In your past deposition we had three exhibits. 8 Let's start this one as Exhibit No. 4, it will be your 9 expert report in the Colangelo case.</p> <p>10 MR. COULSON: Okay. So, Mr. Astorga, you can 11 do the share screen from that.</p> <p>12 MR. ASTORGA: Sorry. It says it's disabled.</p> <p>13 THE VIDEOGRAPHER: I'm on it. Go ahead now.</p> <p>14 MR. ASTORGA: Thank you.</p> <p>15 Q BY MR. COULSON: Mr. Silverman, do you have a 16 copy of your report in front of you, a hard copy or 17 something you can pull up digitally?</p> <p>18 A No, I don't. I don't have a hard copy and I 19 guess if I -- you know, I guess I could put it up on the 20 screen, you know, putting -- you know, splitting the 21 screen, opening a window.</p> <p>22 MR. COULSON: So, Mr. Astorga, are you able to 23 get the Exhibit Share screen?</p> <p>24 MR. ASTORGA: I have it up. You can't see it? 25 Hold on one second.</p>	<p style="text-align: right;">Page 17</p> <p>1 attorneys.</p> <p>2 There was one issue that I was asked to 3 consider in these cases that was not included in the 4 Song case, and it had to do with how consumers look at 5 packages in terms of looking at claims on the front of 6 the package versus looking for say disclaimers that 7 might appear on the reverse side of the package or the 8 side of the package or something like that.</p> <p>9 I was sent a -- an appellate ruling from the 10 7th Circuit from a case called Bell in which the judge 11 -- at least the judge's opinion basically completely 12 reinforced my experience and my opinion about how 13 consumers look at packages when they're in stores and 14 retail. I think the term I used in my report was that 15 they're not detectives, they're not claimed detectives. 16 They don't -- and they shouldn't be expected to have to 17 hunt down disclaimers that appear on the reverse side of 18 the package.</p> <p>19 When I read that, I felt it appropriate to 20 speak to that without citing the ruling, that's not my 21 place to do that, but the essence of that idea I did 22 speak about in these three reports.</p> <p>23 Q Okay. Do you recall anything else that's 24 different substantially between the Song report and what 25 you've done on Colangelo?</p>

<p style="text-align: right;">Page 18</p> <p>1 A I -- gosh, I don't think so. I mean, you're 2 asking me about -- to try to remember exactly what is in 3 three -- actually four separate reports. And each 4 report is somewhat different. But I think that what I 5 just spoke about kind of is the major issues.</p> <p>6 Q Okay. Well, in the Bell case from the 7th 7 Circuit, the qualifier or disclaimer was actually in the 8 ingredient panel that lists the ingredients.</p> <p>9 Did you recall that?</p> <p>10 A Yeah, I do recall that, yeah.</p> <p>11 Q Even as to that, isn't it true that the 12 consumers who purchase Champion's products are 13 information seekers, I thought you testified to that 14 last time?</p> <p>15 A I said yes, I think I did testify about it and 16 it's in my reports. I think that people who buy 17 relatively expensive products for -- in this case, for a 18 beloved house pet, tend to want to get information about 19 the products that they buy, they seek out information in 20 various ways.</p> <p>21 But, you know, that doesn't -- you know, 22 there's a difference in getting information and then 23 taking a magnifying glass to seek out information in 24 super detail, especially in a retail environment.</p> <p>25 Q What do you think about this kind of stuff,</p>	<p style="text-align: right;">Page 20</p> <p>1 And I have not seen that where consumers do that. 2 That's just a mark of consumers not trusting the 3 marketer. And consumers tend to buy products from 4 companies they trust, especially premium priced 5 products.</p> <p>6 Q Okay. Let's go to Page 2 of the exhibit -- 7 it's actually several pages in. It's Page 2 of your 8 report.</p> <p>9 A Could -- it would be helpful if we could get 10 rid of the toolbox on the right side over there of the 11 PDF and if you could just make the page bigger, little 12 bit easier to see.</p> <p>13 If you hit the little arrow on the side. I 14 guess I live with PDFs more than you do. There's a 15 little arrow right -- go up, up, up, go down that line, 16 down that line, down that line, down that -- there you 17 go. Hit that.</p> <p>18 Good. Less distracting. Thank you.</p> <p>19 Q Okay. So in Paragraph 4 there's two products 20 listed, Acana Heritage Free-Run Poultry and Acana 21 Regionals Meadowland.</p> <p>22 Do you see that?</p> <p>23 A Yes, I do.</p> <p>24 Q Who gave you the information about what 25 Champion products were at issue?</p>
<p style="text-align: right;">Page 19</p> <p>1 the plaintiffs as part of their claim rely on 2 information in small font on the back of the bag?</p> <p>3 How do you reconcile that with your view that 4 people should not have to be looking at the back of the 5 bag for disclaimers?</p> <p>6 A I'm not saying that they shouldn't look at the 7 back of the bag, they can look at the back of the bag 8 and look at the front of the bag. It has to do with 9 what they're looking for, what the process is about.</p> <p>10 To me, a good advertiser, a good marketing 11 company, a company that does things the right way puts 12 claims on the front of the package that should be 13 basically unarguable. They should be this is what we 14 stand for, this is what we're about, we're willing to 15 stand by in that. And I think that most consumers today 16 have high expectations from first-class companies, 17 especially from companies where they're paying premiums 18 for the product.</p> <p>19 So, you know, they're going to look at the 20 back for whatever they can look at, it's what they're 21 searching for and whether there's a need to search and 22 whether or not there's something that they would be 23 looking on the back to say, "Well, is the comment, is 24 the statement on the front true?"</p> <p>25 And in my experience, consumers don't do that.</p>	<p style="text-align: right;">Page 21</p> <p>1 A Mr. Locko.</p> <p>2 Q And do you know the time period for the class 3 that the plaintiffs are seeking to certify?</p> <p>4 A Gosh, my recollection is that -- well, I know 5 that I was told when I was working on these three 6 reports that at least the three -- these three reports I 7 should only deal with products that were made in 8 Kentucky, not any of the products that were made in 9 Canada. And again, I'm doing this by memory, but I 10 believe it was 2016 was the first year.</p> <p>11 Q And did counsel explain to you why he wanted 12 to confine it to these particular diets and only ones in 13 Kentucky and only starting in 2016?</p> <p>14 A My understanding was that they were going to 15 restrict to the diets that the named plaintiffs had 16 actually purchased.</p> <p>17 Q Are you aware of whether in this instance -- 18 well, first of all, do you know -- are you aware of what 19 Ms. Colangelo's status is in the case?</p> <p>20 A No. My understanding is she's one of the 21 plaintiffs.</p> <p>22 Q Okay. So you're not aware that she actually 23 dismissed her case?</p> <p>24 A No, I'm not aware of that.</p> <p>25 Q Okay. And then as to Ms. Paradowski, besides</p>

6 (Pages 18 - 21)

<p style="text-align: right;">Page 22</p> <p>1 the free-run poultry and the meadowland, what other 2 diets had she purchased?</p> <p>3 A I don't know.</p> <p>4 Q Is it possible that Ms. Paradowski actually 5 purchased other diets than what you list here?</p> <p>6 A I have no idea.</p> <p>7 Q In the phrase "Delivering nutrients 8 naturally," where is that found on the packaging?</p> <p>9 A It's -- if you show me the package I can point 10 it out to you. It's part of a list that appears, if I 11 remember correctly, on the front of the package.</p> <p>12 Q Now, based on your experience, if a consumer 13 started buying a brand, and later -- and continued 14 buying the brand, and later in time the packaging 15 labeling changed, is it common that the consumer 16 doesn't, you know, read the new packaging label but just 17 continues to buy the product?</p> <p>18 A It's a very general question. You know, 19 there's a lot of different kind of products out there 20 and packaging sometimes does get changed. In my 21 experience, if there appears to be a substantial change 22 the consumer will reexamine the package just to make 23 sure that they're getting what they thought they were 24 getting, that the product is consistent with the product 25 they had been purchasing.</p>	<p style="text-align: right;">Page 24</p> <p>1 Acana or Orijen actually do not read the backs of the 2 package?</p> <p>3 A I never said that.</p> <p>4 Q Well, given that the food is relatively 5 expensive, and those who purchase the food are 6 information seekers, wouldn't you expect them to 7 actually read at least the most prominent language on 8 the back of the packaging?</p> <p>9 A I think that consumers of products like this, 10 premium priced products that they're feeding to their 11 dogs, at some point, usually when they're making their 12 initial decision to purchase the product are going to 13 look at the packaging reasonably closely. There's a lot 14 of information on these packages. And I do believe that 15 consumers like to get information before they make a 16 purchase. They want to make a rational purchase.</p> <p>17 The difference is -- and if we go to 18 subparagraph (i) here, the point is -- is what I'm 19 saying, actually the words say it pretty clearly. It is 20 unreasonable to expect consumers to proactively 21 determine whether the challenge statements that appear 22 on the front of the package are true or to somehow 23 determine if something isn't there, hasn't been 24 addressed.</p> <p>25 So that's what it's saying there. It's</p>
<p style="text-align: right;">Page 23</p> <p>1 Q Are there consumers out there who buy a brand 2 just out of loyalty to it?</p> <p>3 A That's been my experience, yes. A lot of 4 people are brand loyal and they keep buying it.</p> <p>5 Q I realize you don't have this report in front 6 of you, but where in the report did you address this 7 question about how consumers may look at claims on the 8 front versus the back?</p> <p>9 A Well, it's in the report. I don't know 10 whether -- I'm not quite sure exactly what your question 11 means. As we previously discussed, there's a place in 12 the report where I speak about how consumers are not 13 inclined to go hunting to determine the truth of 14 statements that are made on the front label.</p> <p>15 Q Let's go to Page 12 of Exhibit 4.</p> <p>16 A Okay.</p> <p>17 Q Okay. Is it subparagraph (i) -- I guess it's 18 Paragraph 32(i), is that the paragraph that relates to 19 this addition you put into this report?</p> <p>20 A Well, that's a -- that's a -- this is a list 21 or summary of all the opinions that I'm offering in the 22 case. So that is one place where I speak to it, if I 23 recall correctly. Later in the report, in my analysis, 24 I address that issue in a little bit more detail.</p> <p>25 Q Are you saying that consumers who purchase</p>	<p style="text-align: right;">Page 25</p> <p>1 certainly not saying that consumers, you know, don't 2 look at the back of the package. In my opinion, you 3 know, a significant portion of consumers of products 4 like these look at both the front and back.</p> <p>5 It's how they're looking, it's what they're 6 looking for. That's -- and that's a very large 7 difference.</p> <p>8 Q What do you mean by proactive when you said 9 proactively?</p> <p>10 A What I meant by proactively is -- it's in my 11 -- in my both experience -- in my experience, consumers 12 don't say to themselves, "Gee, should I trust these 13 claims on the front? So maybe there's more information 14 on the back and I'll go hunt that down."</p> <p>15 In my experience, consumers don't think that 16 way, they don't behave that way and they don't do that. 17 And the second part of this -- of this particular 18 opinion is that consumers aren't -- they would have no 19 way of proactively saying, "Gee, I think I'm going to go 20 to the back of the package to see what they left out."</p> <p>21 I mean, if you think about that that's a 22 completely illogical idea. You don't look for things 23 that you don't know are there, that you don't expect to 24 be there. So that's what this paragraph is about, what 25 this opinion is about.</p>

<p style="text-align: right;">Page 26</p> <p>1 Videographer, if you don't mind, if you could 2 blow that thing up just a bit bigger. I have a big 3 computer screen, but it's a little bit hard for me to 4 see.</p> <p>5 Q In testifying you've used the word disclaimer, 6 what do you mean by a disclaimer?</p> <p>7 A Well, it's pretty typical in both labeling and 8 advertising that sometimes there are statements made in 9 ads or in television commercials or labels that limit 10 the -- limit the claims or limit the conditions that the 11 consumer has to meet to make the purchase.</p> <p>12 The best example I can think of is in 13 automobile advertising that you see on television, 14 particularly for lease programs, there'll be a very 15 long, almost impossible to read superimposed copy on the 16 television screen that states all the conditions that 17 you would have to meet to lease the vehicle.</p> <p>18 I think those things were invented by people 19 in your profession. They're most certainly not invented 20 by people in mine.</p> <p>21 Q Well, what is the difference between a 22 disclaimer and a marketing message?</p> <p>23 A Well, a marketing message -- the purpose of a 24 marketing message is to communicate attributes or 25 benefits to consumers that would encourage them to see</p>	<p style="text-align: right;">Page 28</p> <p>1 But when you're talking about something that's 2 an ingredient, I don't think consumers think about it 3 that way, I really don't. I suppose that if a consumer 4 was highly aware and highly -- and was very, very 5 concerned about that issue, they might think about it, 6 but I don't think most would.</p> <p>7 You know, it really comes down to whether or 8 not it's something consumers should know. Whether or 9 not it's something consumers are entitled to know. And 10 if consumers are entitled to know about something, then 11 in my opinion the manufacturer should provide that 12 information.</p> <p>13 Q And by "entitled," who's the source of that 14 entitlement, you mean like regulations by the government 15 or --</p> <p>16 A No. No, I'm not speaking of government 17 regulations, I'm speaking of, you know, being -- you 18 know, being a good consumer in my opinion includes, you 19 know, doing a reasonable amount of -- tracking a 20 reasonable amount of information so that you're making a 21 smart purchase.</p> <p>22 If there is an issue of mercury, for example, 23 because there's a lot of fish in the product, in my 24 opinion, that should be revealed on the package that 25 there's a certain amount of -- well, there may be</p>
<p style="text-align: right;">Page 27</p> <p>1 the product favorably and perhaps purchase it.</p> <p>2 A disclaimer can be nothing more than 3 additional information that the consumer might need to 4 know about it, about either the claim or the entire 5 marketing program.</p> <p>6 Q Okay. Now, you're aware -- maybe you're not, 7 I don't think I went over this with you before, are you 8 aware that fish often have mercury in them such as tuna 9 or salmon?</p> <p>10 A Yeah, I'm aware of that.</p> <p>11 Q And so if you're a consumer who's aware of 12 that and you see that an ingre -- you know, that one or 13 more ingredients in the Acana or Orijen food consists of 14 fish, aren't you going to be aware that there's a 15 possibility of at least some amount of mercury in the 16 food?</p> <p>17 A Oh, I think that's -- frankly, I think that's 18 asking a lot from the consumer when you're speaking 19 about dog food. I think buying dog food is very 20 different than going to the supermarket or the fish 21 market and buying a swordfish steak. At least in 22 California they actually have warnings in the 23 supermarket about certain fish that speak to mercury 24 levels, et cetera. California is big on warnings about 25 a lot of things for consumers.</p>	<p style="text-align: right;">Page 29</p> <p>1 mercury included in this particular package, in the dog 2 food.</p> <p>3 Q Are you aware of any pet food manufacturer who 4 makes a disclosure about the presence of any of the 5 heavy metals on its packaging, whether it be lead, 6 arsenic, mercury or cadmium?</p> <p>7 MR. LOCKO: Objection; outside the scope.</p> <p>8 THE WITNESS: Yes. I have not done any 9 studying like that.</p> <p>10 Q BY MR. COULSON: So the answer is you're not 11 aware; correct?</p> <p>12 A That's correct.</p> <p>13 Q Okay. Now, are you aware that consumers of 14 Acana and Orijen often rotate diets for their dogs so 15 they're not always buying the same diet but they buy a 16 variety of diets over time?</p> <p>17 A I'm not aware of that, no.</p> <p>18 Q Would that surprise you if that's the case?</p> <p>19 A It actually does surprise me somewhat. I've 20 had dogs for decades and decades and decades and we've 21 always been advised to, you know, stick to whatever the 22 dog food is, to stick to it, that it ultimately is 23 better for the dog.</p> <p>24 Q Are you still --</p> <p>25 A I don't pretend to be a dog nutrition expert.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q Are you still feeding your dog Zignature?      2 A Yes.      3 Q After the last deposition when I told you      4 about the heavy metal testing in Zignature's products,      5 have you done any research about the presence of heavy      6 metal in the Zignature products that you buy?      7 A I honestly don't recall you telling me about      8 heavy metal research on Zignature. If you did, frankly,      9 my mission was to complete the deposition. It wasn't to      10 go off and study the bag of dog food that we have.      11 Q If you go back to your transcript you can find      12 this discussion on Pages 135 to 136.      13 But, you know, the bottom line is, you know,      14 since you've been doing the expert work in this case and      15 since that deposition, you've done no research yourself      16 as to whether the Zignature products you buy contain any      17 level of heavy metals; is that correct?      18 A That's correct. That would be very far out of      19 the scope of my assignment.      20 Q But did you actually review these two packages      21 for the Colangelo case, the Acana free-run poultry and      22 regional meadowlands?      23 A Yes. Those two -- the two diets, yes.      24 Q Yeah. Did you review only one bag for each of      25 them or did you review various versions of bags for</p>	<p style="text-align: right;">Page 32</p> <p>1 A Yes. For some of the products, yes.      2 Q Let's go to Page 3. These are the last two.      3 A Yes.      4 Q Same question as I had previously, when you      5 compare the Song report to the Zarinebaf report, what is      6 it that you changed?      7 A Well, pretty much I guess the same answer as I      8 gave you on the New York report would apply. My best      9 recollection is that there were more diets that were      10 considered challenged in the Song report. I also      11 believe that there were the specific claims. In some      12 instances that were being challenged, there might have      13 been fewer, some of the -- they eliminated some of the      14 challenge claims.      15 The -- my opinion regarding whether or not      16 consumers hunt down for contradictions regarding front      17 of package claims, whether they hunt them down on the      18 back, that was in this report as well. And there may      19 have been other things that are different. I just can't      20 recall them one to one. These were -- these were fairly      21 large reports. I don't memorize my reports.      22 Q For the Zarinebaf case, are you aware of      23 whether the three plaintiffs, three class representative      24 plaintiffs in the case had purchased other Champion      25 diets other than the ones listed on Pages 2 and 3 of</p>
<p style="text-align: right;">Page 31</p> <p>1 those products?      2 A I think there may have been, you know, two      3 from each, meaning where they changed the packaging at      4 some point.      5 Q Okay. Let's mark as Exhibit 5 your expert      6 report from the Zarinebaf case.      7 (Exhibit 5 was marked for identification      8 and is attached hereto.)      9 Q BY MR. COULSON: And do you recognize      10 Exhibit 5?      11 A Yeah. That appears to be my report.      12 Q Okay. Let's go to Page 2.      13 Again, I assume that counsel told you which      14 products were at issue for purposes of your report?      15 A Yes.      16 Q Okay. And did you review the actual packaging      17 for these products?      18 A At the time I did the report, yes.      19 Q Do you recall whether you reviewed more than      20 one version of these various packages for these diets?      21 A I have been provided with the package graphics      22 that apply to each of these products and I reviewed      23 everything that I was given to review.      24 Q But do you recall whether there was more than      25 one version of bags for some of these products?</p>	<p style="text-align: right;">Page 33</p> <p>1 your report?      2 A I don't know.      3 Q Do you know when those three plaintiffs      4 actually began purchasing pet food made by Champion?      5 A If it was listed in the complaint, I don't      6 recall.      7 Q Do you know what consumer heterogeneity means?      8 (Reporter clarification.)      9 Q BY MR. COULSON: I may have mispronounced      10 this, but do you know what consumer heterogeneity means,      11 H-E-T-E-R-O-G-E-N-E-I-T-Y?      12 A Do I know what it means? I'm not familiar      13 with the term.      14 Q In the field of marketing, is it common -- in      15 the field of marketing, is it commonly accepted that      16 consumers differ in their preferences?      17 A Well, it's certainly commonly accepted that,      18 you know, consumers, we use the word consumers, you      19 know, in the United States that has the potential to      20 mean 330 million different people.      21 What marketers do is they try to seek out      22 consumers -- marketers for their products try to seek      23 out consumers who have a lot of things in common, who      24 have similar demographics, similar psychographics,      25 psychographics meaning lifestyles and value systems,</p>

<p style="text-align: right;">Page 34</p> <p>1 similar interests because that's your best shot at being 2 able to effectively communicate to consumers. 3 So you try to, in essence, create -- you 4 guys -- you lawyer guys would call it a class, you know, 5 marketing people refer to it as a target audience of -- 6 that makes sense for the product that's being sold and 7 for the way you want to sell it.</p> <p>8 Q So even within a target audience, do all those 9 consumers hear about all product features equally?</p> <p>10 A No, not in my experience.</p> <p>11 Q Even within a target audience, do all 12 consumers buy a product for the same reason?</p> <p>13 A Well, you know, that's a very broad question. 14 In this instance, why are the consumers buying the 15 product, they're all buying it for exactly the same 16 reason, they need dog food, they have dogs that they're 17 feeding.</p> <p>18 So yes, from that standpoint the answer is 19 yes. If you were to go a little bit broader and you 20 would say why are consumers buying your client's 21 products versus other brands, there are factors about 22 your client's brands that appeal in general on a broad 23 basis appeal to the consumers that purchase it.</p> <p>24 Is every single factor equal, no. Does every 25 consumer think exactly the same way as another consumer</p>	<p style="text-align: right;">Page 36</p> <p>1 wouldn't you agree with that? 2 A You know, I -- I -- there's always -- there 3 are always individuals who, you know, kind of think more 4 narrowly. But I think that in my experience, effective 5 communications allows consumers to add up the attributes 6 and the benefits that are being expressed by the 7 advertiser.</p> <p>8 Now, some people are always going to be more 9 interested in one than the other. But I've really never 10 heard of a situation where a consumer completely 11 discounts claims that speak to the quality of the 12 product. And, you know, everything you've mentioned 13 deals with the quality of the product. It's the reason 14 consumers will believe this product is of high quality.</p> <p>15 So I don't see consumers just saying, "Oh, I'm 16 going to ignore that, I don't care about that." That's 17 contrary to my experience.</p> <p>18 Q Okay. Let's go to Exhibit 6, which is your 19 report in the Shaker case.</p> <p>20 (Exhibit 6 was marked for identification 21 and is attached hereto.)</p> <p>22 Q BY MR. COULSON: And do you recognize 23 Exhibit 6?</p> <p>24 A Yes, that appears to be my report.</p> <p>25 Q Okay. So same questions I asked before, other</p>
<p style="text-align: right;">Page 35</p> <p>1 that buys the product, no. But in general, the answer 2 is yes, the answer is that -- it's what marketing is all 3 about. Is getting consumers to say, "I'm buying this 4 product because," and then you fill in the blank.</p> <p>5 Q Right. Yeah, but even then the target 6 audience, different consumers could have different 7 reasons for liking or disliking a product; correct?</p> <p>8 A The -- there are always individuals, you know, 9 people are people. But the idea of marketing is -- 10 well, the idea of forming a target audience again is to 11 get people who are going to mostly agree together that 12 the reasons they're buying the product are the reasons 13 suggested or communicated by the marketer.</p> <p>14 That's how consumers choose products, 15 especially products that they personally don't use, 16 meaning, you know, this is a food product, but I don't 17 think many people personally choose to try and eat it.</p> <p>18 Q Right. But even let's take, you know, Orijen 19 or Acana, couldn't it be that some consumers who 20 purchase those products buy it because they like the 21 fact that it's high protein and low carbohydrates, while 22 others really like it because they like the idea of 23 fresh regional ingredients, whereas the person who maybe 24 is really fixated on the high protein doesn't care -- he 25 could care less about whether it's fresh or regional,</p>	<p style="text-align: right;">Page 37</p> <p>1 than having different diets listed and dealing with the 2 question about looking at the back of the packaging and 3 including a discussion as to pentaobarbital, were there 4 any other substantive changes between your report in the 5 Shaker case and what you did in the Song case?</p> <p>6 A I don't believe so.</p> <p>7 Q Let's look at Pages -- actually, let's turn to 8 Page 2 that lists the products.</p> <p>9 Again, I assume that you were given this list 10 of products by the plaintiffs' counsel?</p> <p>11 A Yes, I was.</p> <p>12 Q Did you review the actual packages for these 13 products?</p> <p>14 A I did.</p> <p>15 Q Do you recall whether you reviewed more than 16 one version of a package for these particular products?</p> <p>17 A If I had been provided with more than one 18 version I reviewed it, yes.</p> <p>19 Q Do you know whether the named plaintiffs in 20 the Shaker case purchased Acana or Orijen products other 21 than those listed on Page 2 of your report?</p> <p>22 A I don't know.</p> <p>23 Q I see with Orijen Regional Red, one of the 24 statements that you deal with is "Nourish as nature 25 intended."</p>

10 (Pages 34 - 37)



1           March 17, 2021  
2           BRUCE SILVERMAN  
3           C/O: TREVOR LOCKO, ATTORNEY  
4           OF: ROBBINS LLP  
5           TLocko@robbinsllp.com

6           Re: 3/17/2021 Deposition of: BRUCE SILVERMAN  
7           RACHEL COLANGELO and KATHLEEN PARADOWSKI VS.  
8           CHAMPION PETFOODS USA INC.  
9           CLAIM NO.: 6:18-cv-01228

10          Dear Sir/Madam:

11          This letter is to advise that the transcript of  
12         the above-referenced deposition has been completed  
13         and is available for review. Please contact our  
14         office to come to our office at (800) 275-7991 to  
15         make arrangements to read and sign or sign below to  
16         waive review of this transcript.

17          It is suggested that the review of this  
18         transcript be completed within 30 days of your  
19         receipt of this letter, as considered reasonable  
20         under Federal Rules<sup>\*,</sup>; however, there is no Florida  
21         Statute to this regard.

22          The original of this transcript has been  
23         forwarded to the ordering party and your errata, once  
24         received, will be forwarded to all ordering parties.

25          Sincerely,

26          ROCHELLE HOLMES, Certified Shorthand Reporter

27          WAIVER:  
28          I, \_\_\_\_\_ hereby waive the reading &  
29         signing of my deposition transcript.

30          \_\_\_\_\_  
31          Deponent Signature                      Date

32          \_\_\_\_\_  
33          \*Federal Civil Procedure Rule 30(e)/Florida Civil  
34         Procedure Rule 1.310(e)

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1 ERRATA SHEET

2 DO NOT WRITE ON THE TRANSCRIPT - ENTER CHANGES HERE  
In Re: RACHEL COLANGELO and KATHLEEN PARADOWSKI VS.  
3 CHAMPION PETFOODS USA INC.  
CLAIM NO.: 6:18-cv-01228  
4 DATE: 3/17/2021  
DEPONENT: BRUCE SILVERMAN

5

6 PAGE LINE CORRECTION & REASON

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18  
19 Under penalties of perjury, I declare that I have  
20 read the foregoing document and that the facts stated  
21 are true.

22 \_\_\_\_\_

23 \_\_\_\_\_

24 \_\_\_\_\_

25 DATE BRUCE SILVERMAN

12 (Pages 42 - 44)